IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.524 OF 2003

Oriental Insurance Company Ltd. ...Appellant

Vs.

Smt.Sangita Dattatraya Jamdade & Ors. ...Respondents.

Mr.S.S.Vidyarthi for the Appellants.

Mr.Uday Warunjikar for the Respondents.

CORAM: A.S.OKA, J.

DATED: AUGUST 11, 2004.

JUDGMENT :

1. When Civil Application No.4398 of 2003 in the Appeal was placed before me on 15th June 2004, I directed that instead of deciding the Civil application the First Appeal be taken up for final hearing as it arises out of a claim for compensation in respect of a fatal accident which was filed in the year 1995. Accordingly, I have heard the Counsel appearing for the parties on the last date and today.

2. The claim for compensation arises out of death of one Dattatraya Mahadeo Jamdade. It is an admitted position that he was riding bicycle as pillion rider. A Jeep No.Mh-6-C-2640 driven by the Respondent No.5 and owned by the

Respondent No.6 dashed against the bicycle as a result of which the deceased expired. The Respondent Nos. 1 to 5 are the claimants. The Respondent No.1 is the widow of the deceased and Respondent Nos. 2 to 4 are the minor children of the deceased. The Appellant is the Insurance Company with which the offending vehicle was admittedly insured on the date of accident.

3. It appears that the owner of the offending vehicle did not contest the claim and therefore on the application made by the Appellant-Insurance Company, permission was granted to defend the claim on behalf of the insured. The Tribunal awarded compensation of Rs.4,75,000/- together with interest thereon at the rate of 9% from the date of filing of the Petition till its realization.

4. The learned Counsel appearing for the Appellants submitted that the Claimants did not examine any Eye witness to prove that the accident occurred solely due to negligence of the driver of the offending jeep. He submitted that the finding of the Trial Court as regards negligence on the part of the driver of the jeep has been recorded only on the basis of the certified copy of the F.I.R. and the certified copy of spot panchnama. The reliance is also placed upon two Judgments of this Court. He submitted that the Panchnama and the F.I.R. were not admissible in the evidence unless same were proved. He submitted that the strict rules of Indian

Evidence Act may not be applicable, but the requirement of proof of documents cannot be altogether dispensed with. He submitted that the findings as regards negligence being based only on two documents which are not at all proved, the impugned Judgment and Award deserves to be set aside. He submitted that there was no evidence on record on the basis of which the Tribunal could have come to the conclusion that the income of the deceased was Rs.2500/- per month. Even assuming that the income of the deceased was Rs.2500/- per month, usual deduction which is required to be made on account of personal expenditure of the deceased is not made. He submitted that the multiplier which is applied is on the higher side.

5. The learned Counsel Shri Warunjikar for the Respondent Nos. 1 to 4 supported the impugned Judgment and Award. He submitted that the strict rules as contemplated by the Indian Evidence Act are not applicable to the proceedings before the Motor Accident Claims Tribunal. He submitted that certified copy of F.I.R. and spot Panchnama were produced along with the claim Petition and same were not disputed by the Insurance Company. He submitted that the compensation is just and reasonable and no interference is called for.

6. I have considered the submissions made by the parties. The documents in question i.e. certified copy of F.I.R. and spot panchnama were produced by the original claimants along

with the Claim Petition. In paragraph No.28 of the Claim Petition, reference is made to the fact that the claimants were relying upon the documents which were produced along with Application. In the written statement which is filed by the Appellants, there is no dispute raised as regards the documents which are produced along with the Application. It appears from the record that the the claim application was not defended by the insured and the same was contested by the Appellant as per order below Application at Exh.34 passed under the provisions of Section 170 of Motor Vehicles Act, 1988. By the said order, permission was granted in favour of the Appellant to take all defences and to contest the claim on merits. On 24th July 2002 the said Application was allowed. After the said application was allowed, additional written statement or further written statement was not filed by the Appellant. The evidence was recorded by the Tribunal and on 5th August 2002, the evidence close pursis was filed by the Advocate for the Appellant. On the next date i.e. 12th August 2002 written submissions were filed on behalf of the Appellant and on 21st August 2002 the learned Member of the Tribunal heard the oral submissions made by the Advocate for the Claimant and the matter was closed for Judgment. Thus, no oral submissions were made on behalf of the Appellant. I have perused the written submissions of the Appellant at Exh.41. The written submissions are filed raising only dispute as regards quantum of compensation payable to the Claimants. Not a single submission is made on

behalf of the Appellant on the issue of negligence. In the written submissions, it is stated that considering the evidence on record the total income of the deceased will be Rs.22,000/- p.a. and after deducting 1/3rd from his income and applying multiplier of 15 years, compensation payable will be Rs.2,19,000/- Plus Rs.10,000/- for conventional amount and Rs.5000/- for funeral. It is very clear that the Appellant-Insurance Company did not contest claim as far as issue of negligence is concerned. Only contest was on the quantum of amount payable to the claimants. Therefore, a specific case is made out that the Respondent No.1 to 4 are entitled to compensation of only Rs.2,19,000/- Though opportunity was granted to the Insurance company to defend the claim on behalf insured both on the issue of negligence and quantum the said opportunity was not availed of and the contest by the Insurnace Company was restricted only to the quantum of amount of compensation. There were clear averments made in the Application as regards negligence by the Driver of the jeep. The Driver and owner of the jeep though served did not file the written statement. The Appellant-Insurance Company even after leave was granted did not contest the case on the issue of negligence. It is obvious that as there was no contest by the Appellant on the issue of negligence, the claimants did not examine any eye witness or did not examine any witness to prove the certified copy of the spot panchnama or F.I.R.

7. In this view of the matter, the contention raised by the Appellants that the Panchnama and F.I.R. was not admissible in the evidence for want of proof cannot be considered.

8. Therefore, what is required to be considered is the challenge to quantum of compensation awarded by the Tribunal. The Tribunal has found that the income of the deceased was Rs.2500/- p.m. i.e. Rs.30,000/- per year. In the written submissions made by the Advocate for the Appellant-Insurance company it is stated that the income will have to be taken as Rs.22,000/- p.a. If deposition of the Claimant No.1 is perused and depositions of two other witnesses are considered, the conclusion drawn by the Tribunal that income of the deceased was Rs.2500/-p.m. cannot be said to be erroneous. However, the Tribunal has committed an error by not deducting 1/3rd amount on account of personal expenditure of the deceased. The Tribunal has taken yearly income of the deceased at Rs.30,000/-. If 1/3rd amount is deducted from the said amount, the loss of dependency will come to Rs.20,000/- per year. There is no error if multiplier of 15 years was applied by the Tribunal as the Tribunal has not at all considered the prospects of future increase in the income of deceased who was 35 years of age on the date of accident. If prospects of future increase in the income of the deceased were considered by the Tribunal for the purpose of calculating multiplicand, then there was some substance in the grievance of the Appellants that multiplier

of 15 should not have been applied. Even in the written submissions filed by the Appellants before the Tribunal while calculating compensation payable, the Appellants have applied multiplier of 15. Applying multiplier of 15 the amount of compensation comes to Rs.3,00,000/- (Rs.20,000/- x 15). In the said amount a sum of Rs.15,000/- will have to be added as usual amount and also a sum of Rs.5,000/- on account of funeral expenses. Thus, total compensation payable comes to Rs.3,20,000/-.

9. In the circumstances, the Appeal deserves to be partly allowed. Hence I pass the following order :

i) Appeal is partly allowed. The Award made by the Tribunal is modified only to the extent that total compensation payable will be Rs.3,20,000/- instead of Rs.4,75,000/-. The interest payable on the said amount will be at the rate of 9% p.a. from the date of filing Claim Petition till realisation. The compensation amount shall be payable to the Respondent Nos. 1 to 4 in equal shares. The Respondent No.1 will be entitled to withdraw the amount coming to her share by an Account Payee Cheque. The amounts payable to the Respondent Nos. 2 to 4 respectively as per their respective shares shall be invested in Fixed Deposit in any Nationalised Bank and the Respondent No.1 will be entitled to receive interest payable on the Fixed Deposit after every six months.

The Fixed Deposits shall be renewed from time to time till the respective Respondents attain majority. After attaining majority the respective Respondents will be entitled to withdraw the amount of Fixed Deposit together with interest, if any, accrued thereon.

ii) There will be no order as to costs in this Appeal.

iii) If the amount already deposited by Appellant-Insurance Company in Tribunal is in excess of the amount awarded, the Appellants will be entitled to withdraw the excess amount. The Appellants are permitted to withdraw a sum of Rs.25,000/- paid under Section 173 of Motor Vehicles Act, 1988.

Judge.